

# ***Tax Matters***

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It is good that we honor those who sacrificed everything on September 11, 2001...  
Lest we forget.

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## A WEEK INTO THE SPECIAL SESSION - NOT LOTS OF PROGRESS YET



The 2011 Special Session of the New Mexico Legislature began at noon on Tuesday, September 5<sup>th</sup> and will last no more than 30 days. The primary purpose of the session is to redraw legislative and congressional boundaries following the 2010 annual census. More information on redistricting can be found on the Legislative Council Service website [here](#). New Mexico has an uncompensated volunteer legislature comprised of a 70 member House of Representatives and a 42 member Senate. Legislative sessions alternate between 30-day budget related sessions in even numbered years, and unconstrained 60-day sessions in odd-numbered years.

In addition to calling for bills to redistrict and pay for the session, the Governor's Proclamation added the issues we expected to be included last week. It asked for eleven other bills: eliminating driver's licenses for undocumented workers; eliminating "social promotion" for third graders who can't read at grade level; a cleaned-up in-state procurement preference for state purchases; state and local government authority to restrict fireworks sales; capital outlay; restoration of funding for a supplemental food stamp program; and specified government restructuring. Specifically, the Proclamation requested bills consolidating the Tourism and Cultural Affairs Departments into a Department of Tourism and Cultural Affairs, integrating the Department of Information and Technology as a division into the General Services Department, and placing the Department of Homeland Security and Emergency Management into the General Services Department as a division. The Proclamation can be seen on the Governor's website [here](#).

Bills were being introduced by Wednesday. Currently, 28 House and 21 Senate bills have been introduced. Most of those bills are redistricting related, however other bills have been introduced. The only tax related proposal to be introduced so far is Rep. Mimi Stewart's [House Bill 19](#). It, like most other non-redistricting related proposals, is sitting in the House Rules Committee. Her proposal is similar to the one that passed both houses in the last regular session only to be vetoed. The proposals moves NM to contribution schedule 3, from contribution schedule 1, and that means an increase from an average per employee contribution of \$214.50 to \$369.80. This is intended to stave off insolvency of the unemployment insurance trust fund. Proponents suggest that the alternative will be a mandatory shift to schedule 6 (\$512.21/employee) once the funds are depleted. Although the business community supported the prior effort and was willing to not call it a "tax increase," the Governor viewed the measure as a \$100M+ tax increase on employers and would prefer other approaches. No one suggests that

insolvency and a mandatory move to schedule 6 is a good idea. Having vetoed the proposal already, this is obviously not the proposal the Governor has in mind. Instead, she would appropriate found money in the budget and reserves available now thanks to more optimistic revised revenue forecasts. The hope is that in a couple of years the economy will have improved and the concerns over the fund's insolvency will have passed. The administration has been seeking the support of the business community and others; however a specific proposal has yet to be introduced. We expect that to happen very soon. Likewise for the proposed "fix" for the High Wage jobs Tax Credit (discussed in the last newsletter), which we also expect to see introduced soon.

Other House bills of interest include Rep. Bandy's proposal to combine the Cultural Affairs and Tourism Departments into one, [House Bill 17](#), which is waiting to be heard in the first of three committees it has been assigned to. The only Independent in the House, Rep. Andy Nunez, has introduced his bill from the last session, preventing illegal immigrants from obtaining driver's licenses ([House Bill 18](#)). Speaker of the House Ben Lujan introduced a measure that tightens restrictions on driver's licenses in his [House Bill 22](#). It's essentially the proposal that was passed in the last session only to be vetoed by the Governor. The expected proposal to provide for the ability to limit fireworks sales can be found in Nate Gentry's [House Bill 20](#). Rep. Begaye has three proposals, including a tribal driver's license proposal, that are likely not germane and are still sitting in the House Rules Committee, as is a two-tiered drivers license proposal by Rep. Anderson. The last bill out of the cue in the House is the requested proposal for supplemental food stamp funding in Rep. Roch's [House Bill 28](#).

In the Senate, the first bill out of the gate was the in-state procurement preference proposal by Senator Tim Keller and Rep. Larry Larranaga. [Senate Bill 1](#) was declared germane by the Committee's Committee and is sitting in its only other Senate committee assignment, the Senate Corporations Committee. Ditto for the proposal to end social promotion in public schools, found in Senator Smith and Espinoza's [Senate Bill 2](#). Senator Lovejoy's [Senate Bill 3](#) is a companion of Roch's House Bill 28, the proposal to appropriate \$450K in supplemental food stamp funding. It's sitting in the Senate Finance Committee, it's only remaining Senate committee. Finally, Senator Cisneros is carrying a capital outlay bill in the form of [Senate Bill 10](#). It too is sitting in the Senate Finance Committee, its last stop before the floor in the Senate.

Stay tuned, and we'll keep you updated on the events and non-events of the Special Session!

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## DON'T FORGET THE PRINCIPLES



It is important, particularly when dealing with tough economies, tough budget decisions, and the emotionally charged subject of tax increases, to view the world from the framework of sound principles. Taxes serve an important purpose in that they raise the money to pay for the government services we need. But taxes can also create inefficiencies, distortions, and sometimes inequities. It is a better approach to look at our entire tax system rather than getting lost in the weeds focusing only on a particular rate or some item we choose to tax or not tax. Apart from the debate about how much money our state government should spend and on what, the state has to raise that money in ways which don't harm to the economy, don't get in the

way of job creation and that are seen as fair and equitable. Accordingly, we've taken the opportunity to reprint our principles of good tax policy here:

State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways, and the courts.

- State and local tax policy should do the least harm to the private economy. Therefore, tax bases should be as broad as possible so that tax rates can be as low as possible in order to raise the necessary revenues.
- State and local tax policy should be fair and equitable towards individuals and businesses similarly situated. Individuals with the same income level should be taxed the same. Businesses engaged in similar commercial activities should be subject to the same level of taxation.
- State and local tax policy should not be costly to administer and should be easily understood by taxpayers so as to minimize taxpayer compliance costs.
- The state and local tax burden should be evaluated on the basis of the impact of all taxes levied on a given taxpayer, not just a single tax or tax rate.
- Deviations from established tax policy in pursuit of economic development, social or other goals should be well-reasoned and pursued only when established tax policies are not significantly undermined and the results of such deviations can subsequently be measured and evaluated.

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## **KNICK KNACKS**

### **State Bar Tax Symposium September 23<sup>rd</sup>**

The Taxation Section of the New Mexico Bar is having its annual Tax Symposium on September 23, 2011 at the State Bar. This year, the focus is entirely on New Mexico gross receipts and compensating taxes. The program qualifies for CLE (as well as CPE for CPA's), and will be instructed by NMTRI board members James P. O'Neill (O'Neill Consulting), Tim Van Valen, Esq. (Brownstein Hyatt Farber & Schreck), and NMTRI's Richard Anklam. The agenda and registration information can be found on the Bar website [here](#).

### **Tax Patents Could Be Thing of Past**

If you were worried about taking a tax position or formulating a strategy only to find that you owe someone a royalty, you might be able to relax. Last Thursday the U.S. Senate approved the America Invents Act. The Act, already passed by the U.S. House of Representatives, is now on the President's desk for his signature. The bill, H.R. 1249, includes language preventing the U.S. Patent and Trademark Office from issuing patents for tax strategy methods. Without this provision, taxpayers and their advisors could have been subjected to lawsuits or required to pay royalties just for using the best means available when complying with federal tax law.

[NMTRI note: federal court cases have found that tax strategies were indeed patentable as “business processes,” although clearly bad policy in the context of tax compliance. Who said Congress can’t get anything right?]

### **COST’s 42<sup>nd</sup> Annual Meeting**

The Center on State Taxation (“COST”) is holding its 39<sup>th</sup> annual meeting October 19-21<sup>st</sup> in New Orleans, Louisiana. Topics under discussion are broad and diverse, including current tax and litigation issues, deteriorating state fiscal conditions, incentives best practices, sales and use taxes in an M&A environment, and best practices for dealing with audits to name a few. The agenda and registration information can be found on the COST website [here](#).

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### **TAX QUOTABLE:**

“A fine is a tax for doing something wrong. A tax is a fine for doing something right.”

~ *Author Unknown*

“Tax complexity itself is a kind of tax.”

~*Max Baucus*



**COMMENTS:** Your suggestions and comments on this newsletter, the conferences (past or future), the Distinguished Lectures Series, our research or any aspect of NMTRI’s operation and programs are welcome. Please send them to [richard.anklam@nmtri.org](mailto:richard.anklam@nmtri.org), call 505-269-6791 or mail them to P.O. Box 91657, Albuquerque, New Mexico 87199-1657. We genuinely solicit your input and thank you for your support.



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"The power to tax involves the power to destroy" - McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice John Marshall.

“Taxes are what we pay for civilized society” *Campanía General de Tabacos v. Collector*, 275 U.S. 87, 100 (1927), Justice Oliver Wendell Holmes, dissenting.

Join NMTRI today!